

REMARKS

The last Office Action has been carefully considered.

It is noted that claim 27 is rejected under 35 U.S.C. 102(b) over the patent to Gach.

Also, the drawings and the claims are objected to and rejected under 35 U.S.C. 112.

At the same time, the Examiner indicated that claim 28 appeared to be allowable.

In connection with the Examiner's formal objections and rejections, applicant has provided a new figure of the drawings with the proposed correction. It is believed that the objection to the drawing should be considered as no longer tenable.

In view of the Examiner's rejection of the claim, claim 27 and 28 have been canceled and new claims 29 and 30 have been submitted. These claims have been drafted with consideration of the Examiner's

grounds for the formal objections and rejections to the original claims. Also, claim 30 replaces and contains the subject matter of the original claim 28. In view of the Examiner's indication that claim 28 was not rejected over the art, it is believed that claim 30 should be considered as being in allowable condition.

At the same time, it is respectfully submitted that claim 29 should also be considered as patentably distinguishing over the art and should also be allowed.

The Examiner indicated that since only the lid is claimed, the lid of Gash has a truncated cone-shaped body 20, a cylindrical mouth 24, and two annular internal sealing ribs 60 and 26 at the beginning and end of the truncated cone-shaped body.

It is respectfully submitted that in the device disclosed in the patent to Gach, the rib 26 serves only as a mechanical coupling for the lid 18, and has no sealing effect. The rib 60 is only a mechanical coupling for the disc seal 56. The seal is created by the disc 56, but not by the rib 60. In addition, the rib 60 is not in one piece with the lid 18.

In contrast, in accordance with the present invention, the lid has two annular sealing ribs 48 and 49, wherein one rib 48 is placed at the top of the truncated cone-shaped body to engage with the raised rim 16 of the head 15 and to create a seal to prevent loss of the remaining beverage, while the other rib 49 is placed at the base of the truncated cone-shaped body to prevent pollution of the top of the can 10.

These features of the present invention are not disclosed in the patent to Gach.

The Examiner rejected claim 27 over this reference under 35 U.S.C. 102 as being anticipated. It is believed that this is no longer applicable with respect to claim 29. The Examiner's attention is respectfully directed to the decision in *re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the patent to Gach does not disclose all features of the present invention as now defined in claim 29. Therefore, the anticipation

rejection should be considered as no longer tenable and should be withdrawn.

It is also respectfully submitted that the present invention can not be derived from this reference as a matter of obviousness. In order to arrive at the applicant's invention from the teaching of the patent to Gach, the construction disclosed in this reference has to be fundamentally modified. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision *in re Randol and Redford* (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggestion; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

It can be clearly seen that the reference does not contain any hint or suggestion for such modifications.

It is therefore respectfully submitted that claim 29 should also be considered as patentably distinguishing over the art and should also be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,



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